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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GREATER NAPA FAIR HOUSING  
CENTER, a California Not for Profit  
Corporation, doing business as  
FAIR HOUSING NAPA VALLEY, as  
an individual entity only; RUBY  
DUNCAN, an incompetent adult, by  
and through her Guardian Ad Litem,  
MAE LOUISE WHITAKER; and EVA  
NORTHERN, an incompetent adult,  
by and through her Guardian ad  
Litem, NANCY NORTHERN,  
each individually and on behalf of  
individuals similarly situated;  
NANCY NORTHERN, in her  
individual capacity only; and MAE  
LOUISE WHITAKER, in her  
individual capacity only,

Plaintiffs,

vs.

HARVEST REDWOOD  
RETIREMENT RESIDENCE, L.L.C.,  
doing business as Redwood  
Retirement Residence; REDWOOD  
RETIREMENT RESIDENCE L.L.C.;  
and HOLIDAY RETIREMENT CORP.,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR  
MONETARY, DECLARATORY, AND  
INJUNCTIVE RELIEF; DEMAND FOR  
TRIAL BY JURY; CERTIFICATION OF  
INTERESTED ENTITIES OR  
PERSONS

CLASS ACTION

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CLASS ACTION COMPLAINT FOR MONETARY, DECLARATORY, AND INJUNCTIVE RELIEF;  
DEMAND FOR TRIAL BY JURY; CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

1 **I. INTRODUCTION**

2 1. In this action, plaintiffs seek monetary, declaratory and injunctive relief  
3 against the owners, former owners, and management company of the Redwood  
4 Retirement Residence, a retirement community located at 2350 Redwood Road in  
5 Napa, California, for discriminating on the basis of disability or handicap in violation of  
6 the federal Fair Housing Act and related state laws. Plaintiffs Ruby Duncan and Eva  
7 Northern, through their guardians ad litem, seek to represent a class and subclass of  
8 former, current and future tenants of the Redwood Retirement Residence, who have  
9 lived or will live there at any time since October 1, 2006.

10 **II. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

11 2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. section  
12 1331 in that the claims alleged herein arise under the laws of the United States. This  
13 Court has supplemental jurisdiction pursuant to 28 U.S.C. section 1367 to hear and  
14 determine plaintiffs' state law claims because those claims are related to plaintiffs'  
15 federal law claims and arise out of a common nucleus of related facts. Plaintiffs' state  
16 law claims are related to plaintiffs' federal law claims such that those claims form part of  
17 the same case or controversy under Article III of the United States Constitution.

18 3. Pursuant to Local Rule 3-2, venue is proper in the San Francisco Division  
19 because the claims alleged herein arose within Napa County, California.

20 **III. PARTIES**

21 4. Plaintiff Greater Napa Valley Fair Housing Center, doing business as Fair  
22 Housing Napa Valley (hereafter "FHNV"), is a not for profit fair housing organization  
23 incorporated under the laws of the State of California with its principal place of business  
24 in Napa, California. FHNV is the fair housing organization serving Napa County.  
25 FHNV's primary objectives are to promote equal opportunity in the renting, purchasing,  
26 financing and advertising of housing; to educate people regarding federal and state fair  
27 housing laws; to promote integrated communities and neighborhood diversity; and, to  
28 eliminate discriminatory housing practices. It is engaged in several different activities to

1 further its mission of promoting equal housing opportunities, including: education  
2 programs in the community regarding fair housing, training programs for real estate  
3 professionals, research regarding housing discrimination in the community, advocacy  
4 for housing-related issues, and fair housing counseling and investigations.

5 5. Plaintiff Ruby Duncan is 100 years old. She has been a resident of  
6 apartment 209 at the Redwood Retirement Residence since approximately June 5,  
7 2003. Previously, she was a resident of apartment 110 at the Redwood Retirement  
8 Residence between approximately May 1991 and May 2002. Mrs. Duncan has arthritis  
9 and uses a walker or electric cart to move around. She is substantially impaired in her  
10 ability to walk and engage in other major life activities. She qualifies as a person with a  
11 disability or handicap within the meaning of the federal Fair Housing Act, Disabled  
12 Persons Act, and the California Fair Employment and Housing Act. She is represented  
13 herein by her daughter and guardian ad litem, Mae Louise Whitaker.

14 6. Plaintiff Mae Louise Whitaker, the daughter of Ruby Duncan, is a resident  
15 of Napa County, California. Ms. Whitaker assists her mother Ruby Duncan with her  
16 financial affairs, medical issues, housing, and a wide variety of other matters. Mae  
17 Louise Whitaker and Ruby Duncan entered into a springing durable general power of  
18 attorney dated December 27, 1999, designating Ms. Whitaker as the attorney in fact for  
19 her mother, Ms. Duncan. The durable power of attorney has not been revoked or  
20 cancelled. Ms. Whitaker brings this action in her individual capacity and as guardian ad  
21 litem for her mother Ruby Duncan.

22 7. Plaintiff Eva Northern is 86 years old. She was a resident of apartment  
23 112 at the Redwood Retirement Residence from approximately March 1, 2001 until  
24 March 15, 2007. At the time that Eva Northern moved into the Redwood Retirement  
25 Residence, she had several disabilities, including diabetes. She also had complications  
26 from a previous stroke, including communication and perception impairments. She  
27 qualifies as a person with a disability or handicap within the meaning of the federal Fair  
28 Housing Act, Disabled Persons Act, and the California Fair Employment and Housing

1 Act. She is represented herein by her daughter and guardian ad litem, Nancy Northern.

2 8. Plaintiff Nancy Northern, the daughter of Eva Northern, is a resident of  
3 Contra Costa County, California. During the time that Eva Northern was a resident of  
4 the Redwood Retirement Residence and continuing through the present, Nancy  
5 Northern has assisted her mother with her financial affairs, medical issues, housing,  
6 and a wide variety of other matters. Eva Northern and Nancy Northern entered into a  
7 durable power of attorney dated March 4, 1996, designating Nancy Northern as the  
8 attorney in fact for her mother, Eva Northern. The durable power of attorney has not  
9 been revoked or cancelled. Ms. Northern brings this action in her individual capacity  
10 and as guardian ad litem for her mother Eva Northern.

11 9. The Redwood Retirement Residence, the subject premises in this action,  
12 has approximately 100 apartment units that are marketed and offered for rental to  
13 members of the general public. It is located at located at 2350 Redwood Road in Napa,  
14 California. Plaintiffs allege based on information and belief that the Redwood  
15 Retirement Residence is offered as housing for older persons as defined in 42 U.S.C.  
16 section 3607(b)(1). The Redwood Retirement Residence qualifies as a dwelling within  
17 the meaning of 42 U.S.C section 3602(b) and a housing accommodation within the  
18 meaning of Government Code section 12927(d).

19 10. Defendant Harvest Redwood Retirement Residence, LLC is a Delaware  
20 Limited Liability Company licensed in California with a primary business address in  
21 Salem, Oregon. A grant deed recorded with the Napa County Recorder on March 15,  
22 2007 indicates that defendant Harvest Redwood Retirement Residence, LLC is the  
23 current owner of the Redwood Retirement Residence

24 11. Defendant Redwood Retirement Residence LLC is an Oregon Limited  
25 Liability Company with a primary address in Salem, Oregon. According to public  
26 documents recorded with the Napa County Recorder, defendant Redwood Retirement  
27 Residence LLC was the owner of the Redwood Retirement Residence from  
28 approximately April 5, 1999 until approximately February 28, 2007, when the manager

1 of the LLC signed a grant deed transferring ownership of the property to defendant  
2 Harvest Redwood Retirement Residence LLC.

3 12. Defendant Holiday Retirement Corporation (hereafter, "Holiday") is a  
4 corporation registered to do business in California with a primary business address in  
5 Salem, Oregon. Holiday has been the management company responsible for the day-  
6 to-day management and operation of the Redwood Retirement Residence at all times  
7 relevant herein.

8 13. Each defendant is, and at all times relevant was, the agent, employee or  
9 representative of each other defendant; each defendant, in doing the acts or in omitting  
10 to act as alleged in this complaint, was acting within the course and scope of his or her  
11 actual or apparent authority pursuant to such agency; or the alleged acts or omissions  
12 of each defendant as agent were subsequently ratified and adopted by each defendant  
13 as principal.

14 14. Defendants Harvest Redwood Retirement Residence, LLC, Redwood  
15 Retirement Residence LLC, and Holiday Retirement Corporation retained the authority  
16 to control and direct the agents who committed the unlawful practices alleged in this  
17 complaint.

18 15. Defendants and their agents have conspired to violate federal and state  
19 laws. In committing each of the unlawful practices alleged in this complaint, each  
20 defendant and their agents was acting during the course and in furtherance of that  
21 conspiracy.

#### 22 **IV. CLASS ACTION ALLEGATIONS**

##### 23 **A. DISABILITY CLASS**

24 16. Class Definition. Class representatives Ruby Duncan and Eva Northern,  
25 through their guardians ad litem, bring this action on behalf of themselves and  
26 members of a class of similarly situated individuals. The class that plaintiffs seek to  
27 represent is defined as

28 All tenants of the Redwood Retirement Residence who have resided there

1 at any time since October 1, 2006, who have been or may be subjected to  
2 defendants' challenged discriminatory housing practices.

3 In addition, class representative Eva Northern, through her guardian ad litem, seeks to  
4 represent the subclass of former residents defined as

5 All tenants of the Redwood Retirement Residence, who have been or may be  
6 subjected to defendants' challenged discriminatory housing practices and who  
7 vacated the Redwood Retirement Residence under threat of eviction at any time  
8 since October 1, 2006.

9 The class and subclass do not include home health care aides or attendants who may  
10 have resided at the Redwood Retirement Residence while in the employ of the  
11 Redwood residents or their families. The term "disability class plaintiffs" as used herein  
12 refers to Ruby Duncan and Eva Northern and the class and subclass of former, current  
13 and future residents whom they seek to represent. This action is maintainable as a  
14 class action under Rule 23(a), Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of  
15 Civil Procedure.

16 17. Numerosity. The number of members of the class on whose behalf  
17 plaintiffs sue is unknown, but it is estimated to be so numerous that joinder of all such  
18 members is impracticable. The number of persons possibly affected by defendants'  
19 illegal policies and practices is indeterminate, but it is larger than can be addressed by  
20 joinder.

21 18. Adequacy of Representation. Class plaintiffs will fairly and adequately  
22 protect the interests of the class because plaintiffs' counsel possesses the requisite  
23 resources and ability to prosecute this action and because the class representatives'  
24 interests are consistent with the interests of the class.

25 19. Commonality and Typicality. This suit poses questions of law and fact  
26 that are common to and affect the rights of all members of the class. The claims of the  
27 class representatives are typical of the claims of class members as a whole, because  
28 defendants have implemented and pursued a policy or practice of discriminating

1 against persons with disabilities or handicaps by promulgating and enforcing  
2 discriminatory policies, by subjecting persons with disabilities or handicaps to different  
3 terms and condition of rental, by serving eviction notices on people with disabilities or  
4 handicaps, and publishing statements indicating limitations on people with disabilities or  
5 handicaps. Specifically, defendants:

6 a. apply different terms and conditions of tenancy to disabled or  
7 handicapped residents because of disability or handicap, including but not  
8 limited to charging extra fees for residents who receive their meals in their  
9 apartments because of a disability or handicap;

10 b. evict residents with disabilities or handicaps because of disability or  
11 handicap;

12 c. subject residents to examinations or questions to determine  
13 whether they are able to live independently;

14 e. make, print or publish statements that indicated a limitation upon  
15 people with disabilities or handicaps in the rental of housing, including but  
16 not limited to making oral or written statements to the effect that all  
17 residents must be able to live "independently;" and,

18 f. fail to make reasonable accommodations when such  
19 accommodations are necessary to permit people with disabilities or  
20 handicaps to use and enjoy a dwelling.

21 Defendants' policies, practices and statements constitute discriminatory housing  
22 practices within the meaning and in violation of the federal Fair Housing Act, the  
23 California Fair Employment and Housing Act, the Disabled Persons Act, and the Unruh  
24 Civil Rights Act. These policies, practices and statements affect class members  
25 comprised of all persons who have resided at the Redwood at any time from October 1,  
26 2006, to the present, and will continue to affect future residents of the Redwood until  
27 they are stopped.

28 20. Superiority. A class action is superior to other available methods for the



1 fair and efficient adjudication of the controversy of the claims of the class plaintiffs.  
2 Common factual and legal questions so clearly predominate that class treatment is  
3 appropriate. The class as a whole is entitled to declaratory relief and to injunctive relief  
4 to enjoin the unlawful policies and practices herein alleged. Defendants applied their  
5 discriminatory policies, practices and statements throughout the entire operation of the  
6 Redwood.

7 21. General Applicability. Defendants have acted or refused to act on  
8 grounds generally applicable to each class member by promulgating and enforcing  
9 rules, regulations and policies that discriminate against persons with disabilities or  
10 handicaps, thereby making appropriate final injunctive and declaratory relief with  
11 respect to the class as a whole.

12 22. Risk of Inconsistent Adjudication. The class and subclass are readily  
13 definable and prosecution of this action as a class action will eliminate the possibility of  
14 repetitious litigation, and will eliminate the risk of inconsistent or varying adjudications  
15 with respect to individual members of the class that would establish incompatible  
16 standards of conduct for defendants.

17 **B. SECURITY DEPOSIT CLASS**

18 23. Class Definition. In addition to the discriminatory housing practices  
19 challenged herein, defendants have charged unlawful, non-refundable security deposits  
20 in violation of California law. Class representative Ruby Duncan, through her guardian  
21 ad litem, bring this action on behalf of herself and members of a class of similarly  
22 situated individuals. The class that plaintiff seeks to represent is defined as

23 All tenants of the Redwood Retirement Residence at any time  
24 commencing four years prior to the filing of this complaint who paid "non-  
25 refundable" security deposits to defendants in violation of California Civil  
26 Code § 1950.5.

27 The term "security deposit class plaintiffs" as used herein refers to Ruby Duncan and  
28 the class of persons whom she seeks to represent. This action is maintainable as a



1 class action under Rule 23(a), Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of  
2 Civil Procedure.

3 24. Numerosity. The number of members of the class on whose behalf  
4 plaintiffs sue is unknown, but it is estimated to be so numerous that joinder of all such  
5 members is impracticable. The number of persons possibly affected by defendants'  
6 illegal policies and practices is indeterminate, but it is larger than can be addressed by  
7 joinder.

8 25. Adequacy of Representation. Class plaintiffs will fairly and adequately  
9 protect the interests of the class because plaintiffs' counsel possesses the requisite  
10 resources and ability to prosecute this action and because the class representative's  
11 interests are consistent with the interests of the class.

12 26. Commonality and Typicality. This suit poses questions of law and fact  
13 that are common to and affect the rights of all members of the class. The claims of the  
14 class representative is typical of the claims of class members as a whole, because  
15 defendants have implemented and a practice of charging tenants as "non-refundable"  
16 signing charge at the commencement of tenancy. That unlawful practice affected  
17 former tenants and affects current tenants, and will continue to affect future residents of  
18 the Redwood until it is stopped.

19 27. Superiority. A class action is superior to other available methods for the  
20 fair and efficient adjudication of the controversy of the claims of the class plaintiffs.  
21 Common factual and legal questions so clearly predominate that class treatment is  
22 appropriate. The class as a whole is entitled to declaratory relief and to injunctive relief  
23 to enjoin the unlawful policies and practices herein alleged. Defendants collected their  
24 "non-refundable" security deposit upon the commencement of new tenancies at the  
25 Redwood during the class period.

26 28. General Applicability. Defendants have acted or refused to act on  
27 grounds generally applicable to each class member by collecting a "non-refundable"  
28 security deposit upon the commencement of new tenancies at the Redwood during the

1 class period, thereby making appropriate final injunctive and declaratory relief with  
2 respect to the class as a whole.

3 29. Risk of Inconsistent Adjudication. The class and subclass are readily  
4 definable and prosecution of this action as a class action will eliminate the possibility of  
5 repetitious litigation, and will eliminate the risk of inconsistent or varying adjudications  
6 with respect to individual members of the class that would establish incompatible  
7 standards of conduct for defendants.

8 **V. FACTS UNDERLYING THE CLAIMS OF THE CLASSES AND SUBCLASS.**

9 **A. INTRODUCTION**

10 30. Defendants, acting individually and in concert, directly and through their  
11 agents, implemented a series of policies and practices with the purpose or effect of  
12 discriminating against residents with disabilities or handicaps at the Redwood  
13 Retirement Residence.

14 31. Defendants have unlawfully discriminated against the disability class  
15 plaintiffs by refusing to rent, evicting, or otherwise making unavailable dwellings to  
16 people with disabilities or handicaps at the Redwood Retirement Residence, in violation  
17 of 42 U.S.C. section 3604(a), (f), and related state laws.

18 32. Defendants have unlawfully discriminated against the disability class  
19 plaintiffs in the terms, conditions or privileges of the rental of apartment units at the  
20 Redwood Retirement Residence by promulgating and enforcing rules with the purpose  
21 and effect of discriminating against people with disabilities or handicaps, in violation of  
22 42 U.S.C. section 3604(b), (f), and related state laws.

23 33. Defendants have unlawfully discriminated against the disability class  
24 plaintiffs by making and causing to be made, printing and publishing discriminatory  
25 rules, regulations and statements indicating preferences, limitations and discrimination  
26 based on handicap or disability at the Redwood Retirement Residence, in violation of  
27 42 U.S.C. section 3604(c), (f), and related state laws.

28 34. Defendants have unlawfully discriminated against the disability class

1 plaintiffs by refusing to make reasonable accommodations to rules, policies, practices  
2 or services when such accommodations are necessary to afford people with disabilities  
3 or handicaps an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C.  
4 section 3604(f)(3)(B), and related state laws.

5 35. Defendants have unlawfully discriminated against the disability class  
6 plaintiffs by coercion, intimidation, threats and interference with the use and enjoyment  
7 of dwellings because of handicap or disability, and by creating a hostile living  
8 environment in violation of 42 U.S.C. section 3617 and related state laws.

9 36. Defendants have unlawfully charged the security deposit class plaintiffs  
10 non-refundable security deposits in connection with the rental of apartments at the  
11 Redwood Retirement Residence in violation of California Civil Code section 1950.5.

12 **B. FACTS UNDERLYING THE CLAIMS OF RUBY DUNCAN AND MAE**  
13 **LOUISE WHITAKER**

14 37. In 1991, Ruby Duncan moved from a retirement residence in Riverside,  
15 California to the Redwood Retirement Residence in order to live closer to her daughter,  
16 Mae Louise Whitaker. Between May 1991 and May 2002, Mrs. Duncan lived in  
17 apartment 110 at the Redwood Retirement Residence.

18 38. In June 2002, Mrs. Duncan moved to an assisted living facility in Napa,  
19 California, where she lived for approximately one year. At the end of that year, she  
20 decided to return to the Redwood Retirement Residence. On or about June 5, 2003,  
21 she signed a new rental agreement for apartment 209 at the Redwood Retirement  
22 Residence. Apartment 209 is a studio apartment with one bathroom and a small  
23 kitchenette. The initial rent for apartment 209 was \$1,695 but it has just been raised to  
24 \$1,955. The rent includes three meals a day, light housekeeping, social programs for  
25 the residents, and a variety of other amenities. Mrs. Duncan continues to live in  
26 apartment 209 at the Redwood Retirement Residence.

27 39. The rental agreement signed by Mrs. Duncan requires payment of a  
28 "signing fee" in the amount of \$847.50, and a security deposit in the amount of \$847.50.

1 The "signing fee" is described in an addendum to the rental agreement as a "one-time  
2 fee [that] is non-refundable" unless the tenant moves out in 90 days or less. If the  
3 tenant stays at the Redwood Retirement Residence 91 days or longer, the "signing fee"  
4 is non-refundable. Mrs. Duncan paid both the security deposit and non-refundable  
5 "signing fee" to the Redwood Retirement Residence on or about June 5, 2003.

6 40. Mrs. Duncan has had the assistance of a home health care aide since  
7 approximately June 2003. Mrs. Duncan and Mrs. Whitaker pay the home health care  
8 aide directly for her services. The home health care aide assists Mrs. Duncan with daily  
9 activities such as taking medications and ambulating. Frequently, Mrs. Duncan does  
10 not feel well enough to dress and leave her apartment because of her health. The  
11 home health care aide goes to the kitchen at meal times to pick up meal trays for Mrs.  
12 Duncan so that she can stay in her apartment instead of going to the communal dining  
13 room.

14 41. In late 2006, during a visit to the Redwood Retirement Residence, Mrs.  
15 Whitaker found a document in her mother's apartment entitled "the Redwood Meal Tray  
16 Policy." She read the document and became concerned because the new meal tray  
17 policy indicated that the management would assess extra charges for in-home meal  
18 service with very limited exceptions. The limited exceptions – short term illness such as  
19 the flu, or short term recuperation from injury or illness with full recovery expected – did  
20 not cover Mrs. Duncan's situation.

21 42. At around the same time that she became aware of the new meal tray  
22 policy, Mrs. Whitaker learned that the managers of the Redwood Retirement Residence  
23 were asking residents to move out if they could no longer use the communal dining  
24 room or did not otherwise fit within the managers' definition of an "active, independent"  
25 senior.

26 43. In December 2006, Mrs. Whitaker contacted the managers of the  
27 Redwood Retirement Residence and asked about the meal trays. Mrs. Whitaker  
28 pointed out that in-home meal trays did not pose any extra burden or expense for the

1 Redwood Retirement Residence since Mrs. Duncan's home health care aide picks up  
2 and returns the trays and dishes to the kitchen. She also asked for a reduction in rent  
3 as reimbursement for the meals Ruby Duncan did not take from the kitchen. In  
4 response to these inquiries, one of the resident managers of Redwood Retirement  
5 Residence, Denise Hall, informed Ms. Whitaker that her mother would have to move  
6 out if she could not eat her meals in the dining room.

7 44. Shortly thereafter, Mrs. Whitaker provided a letter to the Redwood  
8 Retirement Residence from Mrs. Duncan's physician verifying that Mrs. Duncan should  
9 be permitted to take her meals in her apartment due to her physical condition. To date,  
10 neither Mrs. Duncan nor Mrs. Whitaker has received any response to the physician's  
11 letter.

12 45. In December 2006, Mrs. Whitaker contacted the managers of the  
13 Redwood Retirement Residence to inquire about the move-out notices that had been  
14 served on some disabled residents. Denise Hall stated that Mrs. Duncan was not on  
15 "the list" of residents who were being asked to move out, but that she would be asked to  
16 move out "soon," or words to that effect. Mrs. Whitaker asked why the managers were  
17 evicting these people. Mr. Hall and Mrs. Hall stated that they wanted the Redwood  
18 Retirement Residence to be a retirement home, like it used to be, rather than an "old  
19 folks' home," or words to that effect. They stated that they were "weeding out" the  
20 wheelchairs and walkers because they gave Redwood Retirement Residence "a bad  
21 image," or words to that effect. They added that Mrs. Whitaker should start looking for  
22 another home for her mother, Ruby Duncan.

23 46. Mrs. Whitaker and Mrs. Duncan continue to fear that the managers will  
24 serve Mrs. Duncan with a move out notice or take other action to evict Mrs. Duncan  
25 from the Redwood Retirement Residence. Mrs. Duncan does not want to move out of  
26 the Redwood Retirement Residence.

27 ///

28 ///

**C. FACTS UNDERLYING THE CLAIMS OF EVA NORTHERN AND NANCY NORTHERN.**

47. In December 2000, Eva Northern and Nancy Northern visited the Redwood Retirement Residence to look into renting an apartment for Eva Northern. Eva Northern and Nancy Northern decided to rent an apartment at the Redwood Retirement Residence with two bedrooms and one bathroom. Nancy Northern informed the resident managers that they liked the two-bedroom apartment because her mother might need extra room for a live-in care giver as she aged. Eva Northern and Nancy Northern expected that Eva Northern would live at the Redwood Retirement Residence for the rest of her life.

48. In January 2001, Eva Northern signed a rental agreement for apartment 112 at the Redwood Retirement Residence, and moved in on or about March 1, 2001. The apartment had a small kitchenette with a mini refrigerator and sink. The monthly rent included three meals a day, light housekeeping, social programs for the residents, and a variety of other amenities. When she moved out in March 2007, the monthly rent for apartment 112 was \$2,735.

49. At the time that Eva Northern moved into the Redwood Retirement Residence, she had several disabilities, including diabetes. She also had complications from a previous stroke, including communication and perception impairments. Soon after Eva Northern moved in to the Redwood Retirement Residence, Nancy Northern hired home health care aides to assist Eva Northern with daily activities such as taking medications and getting dressed. The home health care aides also went to the Redwood Retirement Residence kitchen at meal times to pick up meal trays for Eva Northern to eat in her apartment. The home health care aides assisted Eva Northern for several hours each day throughout her tenancy at the Redwood Retirement Residence. Nancy Northern and Eva Northern paid the home health care aides directly for their services.

50. In September 2006, Nancy Northern received a phone call from one of



1 Eva Northern's home health care aides, informing her that the Redwood Retirement  
2 Residence had a new policy prohibiting her from bringing Eva Northern's meals to her  
3 apartment every day. Shortly thereafter, Eva Northern received a notice from the  
4 Redwood Retirement Residence entitled "The Redwood Meal Tray Policy." That notice  
5 reads, in pertinent part,

6 With few exceptions, meal trays will be permitted only for residents who  
7 are temporarily ill or who are rehabilitating and cannot come to the dining  
8 room due to their short-term condition where full or near full recovery is  
9 expected.

10 ...

11 If the temporary illness or rehabilitation lasts longer than 3 days, the  
12 Redwood will charge the resident a \$10.00 per day meal tray preparation  
13 fee commencing on the 4<sup>th</sup> day trays are being delivered to the resident.

14 51. The same notice also stated, "please keep in mind that the Redwood is a  
15 retirement community designed for active and independent seniors."

16 52. Nancy Northern called the resident managers of the Redwood Retirement  
17 Residence to discuss the new meal tray policies. She informed them that her mother,  
18 Eva Northern, wanted to continue to have her home health care aide pick up meal trays  
19 from the kitchen and bring them to her room. The managers agreed that this  
20 arrangement could continue for some unspecified period of time.

21 53. On or about December 31, 2006, a home health care aide contacted  
22 Nancy Northern by phone and stated the Redwood Retirement Residence had  
23 prohibited her from picking up any additional meals for Eva Northern. She stated that  
24 Eva Northern had not been given any breakfast by the Redwood Retirement  
25 Residence, and that she had taken some fruit from a holiday gift basket so that Eva  
26 Northern could eat and her blood sugar would not become dangerously low.

27 54. On the same day that she received the call from the home health care  
28 aide, Nancy Northern drove to the Redwood Retirement Residence and met with the



1 managers. She explained to them that Eva Northern did not eat her meals in the dining  
2 room because of her communication impairments. The managers agreed to permit the  
3 home health care aides to pick up additional food trays if Nancy Northern would agree  
4 to pay \$5.00 per tray. Nancy Northern agreed to pay the charges because she was told  
5 her mother's meal trays would be discontinued if she did not agree to pay. Nancy  
6 Northern reiterated to the resident managers that she disagreed with the meal tray  
7 policy.

8 55. On or about January 3, 2007, Nancy Northern received a phone call from  
9 Tom Ahrens, who identified himself as a regional manager for Holiday. Mr. Ahrens  
10 stated that the Redwood Retirement Residence is an "independent living facility," and  
11 that people who cannot eat their meals in the dining room "do not belong at the  
12 Redwood," or words to that effect. Mr. Ahrens stated that the Redwood Retirement  
13 Residence was "not intended" for people who could not make it to the dining room.  
14 Nancy Northern told Mr. Ahrens that she had never before been told that the Redwood  
15 Retirement Residence was limited to people who could use the dining room, and that  
16 she had helped her mother move into the Redwood Retirement Residence with the  
17 expectation that she could live there until she died even if she had disabilities that  
18 prevented her from going to the dining room.

19 56. Nancy Northern advised Mr. Ahrens that the meal trays imposed no  
20 additional burden or cost on the Redwood Retirement Residence, since the privately-  
21 paid, home health care aide picked up the meal trays, brought them to Eva Northern,  
22 and returned them to the kitchen after she was finished. Nancy Northern also pointed  
23 out that her mother was diabetic, and that it was inhumane to deny her food. Mr.  
24 Ahrens stated that he would permit her to continue to receive meal trays in her room  
25 free of extra charges until January 8, 2007, but no longer. Nancy Northern also stated  
26 that since meals were included in the monthly rental, her mother should be reimbursed  
27 if the Redwood Retirement Residence refused to provide those meals. Mr. Ahrens  
28 stated that he would look into her request for reimbursement and call her back. Mr.

1 Ahrens never called her back. Nancy Northern then made the same request to the  
2 managers at Redwood Retirement Residence, but no one from Redwood Retirement  
3 Residence or Holiday ever provided any information about whether she could be  
4 reimbursed for missed meals.

5 57. Nancy Northern was shocked and upset by this phone call with Mr.  
6 Ahrens. She acted quickly to ensure that her mother would be able to eat despite the  
7 Redwood Retirement Residence's policy. She purchased a small freezer and placed it  
8 in Eva Northern's apartment. She purchased and cooked meals to be frozen or  
9 refrigerated in her mother's apartment to be served by the home health care aides. For  
10 two and one-half months, Nancy Northern made several trips per week to the Redwood  
11 Retirement Residence to purchase and deliver meals for her mother.

12 58. During this same period of time, Nancy Northern learned that some of the  
13 residents at the Redwood Retirement Residence had been asked to move out because  
14 they required assistance and could not live independently. She feared that her mother  
15 would receive an eviction notice. As a result of this fear, the new meal tray policy, and  
16 Mr. Ahrens' comments indicating that people with disabilities were not welcome at the  
17 Redwood Retirement Residence, Nancy Northern began to look for another residence  
18 for her mother.

19 59. In early March 2007, Nancy Northern made arrangements to move Eva  
20 Northern to Aegis, an assisted living facility in Napa, California. Eva Northern  
21 vehemently opposed moving out of the Redwood Retirement Residence. Nevertheless,  
22 she moved out of the Redwood Retirement Residence to Aegis, a facility that provides  
23 housing for older persons, on or about March 15, 2007. The monthly cost of Aegis far  
24 exceeded the cost of the Redwood Retirement Residence, even when the cost of the  
25 private, in-home health care aide at the Redwood Retirement Residence is included.

26 60. After moving out of the Redwood Retirement Residence, Eva Northern's  
27 physical and mental condition declined significantly. Eva Northern was hospitalized  
28 with an infection on or about June 1, 2007. Following her release from the hospital,

1 Eva Northern moved out of Aegis and into a board and care home. The cost of the  
2 board and care home exceed the cost of Redwood Retirement Residence.

3 **D. THE INVOLVEMENT OF FAIR HOUSING NAPA VALLEY**

4 61. Between November 2, 2006 and the present, FHNV received complaints  
5 from at least eight individuals about discrimination based on handicap or disability at  
6 the Redwood Retirement Residence. The first complainant advised FHNV that the  
7 Redwood Retirement Residence management had given a family member a 30-day  
8 notice to vacate because of her health, advising that "the Redwood is an independent  
9 living community for seniors able to maintain an active lifestyle." In response to that  
10 complaint and those that followed, FHNV conducted an investigation into defendants'  
11 rental practices.

12 62. During that investigation, plaintiff FHNV learned that numerous residents  
13 had received oral or written 30-day eviction notices starting in the fall of 2006 because  
14 of their handicaps or disabilities. Plaintiffs further allege based on information and  
15 belief that many of the residents who received move out notices have since moved out  
16 of the Redwood Retirement Residence. Other residents have moved out because of  
17 the threat of receiving such notices and the fear of having to relocate on short notice.

18 63. During their investigation, plaintiff FHNV also learned that some or all  
19 residents at the Redwood Retirement Residence had been subjected to an  
20 examination, or questioning, or both, about their physical and mental condition in the  
21 fall of 2006. Plaintiffs allege based on information and belief that the examination and  
22 questioning were designed to determine which residents should be asked to move out  
23 because they were "too disabled" to reside at the Redwood Retirement Residence.

24 64. During their investigation, plaintiff FHNV also learned that defendants had  
25 placed restrictions on the activities of home health care aides hired by the Redwood  
26 Retirement Residence residents, including prohibiting the aides from sitting in the dining  
27 room to assist residents during meals.

28 65. On or about June 18, 2007, plaintiff FHNV distributed letters and

1 brochures to residents of the Redwood Retirement Residence as part of an educational  
2 campaign about fair housing rights.

3 **E. INJURIES**

4 66. Defendants have made statements, promulgated and enforced rules,  
5 regulations, and policies, evicted tenants, and created or maintained a hostile  
6 environment with the purpose or effect of discriminating against people with handicaps  
7 and disabilities at the Redwood Retirement Residence. Defendants continue to engage  
8 in such a pattern or practice of discrimination so as to constitute a continuing violation.

9 67. By reason of defendants' unlawful acts and practices, the disability class  
10 plaintiffs have suffered economic damages, violation of their civil rights, emotional and  
11 physical distress, humiliation and mental anguish, including bodily injury such as  
12 headaches, stomach aches and loss of sleep, breach of the covenant of quiet  
13 enjoyment of their dwellings and invasion of the private right of occupancy. The  
14 members of the disability plaintiff sub-class have also suffered loss of an important  
15 housing opportunity, constructive and wrongful eviction, including breach of the  
16 covenant of quiet enjoyment of their dwellings and invasion of the private right of  
17 occupancy, and economic damages and emotional distress in connection with their  
18 move out of the Redwood Retirement Residence. The disability class plaintiffs and  
19 plaintiff sub-class are, therefore, entitled to compensatory damages.

20 68. By reason of defendants' unlawful acts and practices, the security deposit  
21 class plaintiffs have suffered actual damages and entitled to refund of the unlawfully  
22 collected security deposit and statutory damages.

23 69. By reason of defendants' unlawful acts and practices, individual plaintiffs  
24 Mae Louise Whitaker and Nancy Northern have suffered economic damages,  
25 emotional and physical distress, humiliation and mental anguish, including bodily injury  
26 such as headaches, stomachaches and loss of sleep. These individual plaintiffs,  
27 therefore, are entitled to compensatory damages.

28 70. Defendants' discriminatory actions have caused and are continuing to

1 cause harm to Fair Housing Napa Valley by frustrating its mission of eliminating  
2 discriminatory housing practices throughout its service area. Defendants' actions have  
3 interfered with all of the efforts and programs of FHNV by (1) forcing FHNV to direct  
4 their scarce resources to identifying and counteracting the defendants' unlawful  
5 practices, and (2) frustrating its mission of eliminating discriminatory housing practices  
6 in their service area. Defendants' unlawful acts and practices have caused FHNV to  
7 suffer economic losses in staff pay, in funds expended in support of its investigation,  
8 and in the inability to prevent other unlawful housing practices and undertake other  
9 activities in support of its mission. Defendants' actions have set back FHNV's goal of  
10 achieving fair housing for prospective tenants regardless of disability by impeding its  
11 effort to educate the public about the fair housing laws. FHNV is, therefore, entitled to  
12 compensatory damages.

13 71. In doing the acts of which the disability class plaintiffs, FHNV and the  
14 individual plaintiffs complain, defendants and their agents and employees acted with  
15 reckless disregard for plaintiffs' civil rights. Accordingly, the disability class plaintiffs,  
16 FHNV and the individual plaintiffs are entitled to punitive damages.

17 72. There now exists an actual controversy between the parties regarding  
18 defendants' duties under the federal and state fair housing laws. Accordingly, the  
19 disability class plaintiffs, FHNV and the individual plaintiffs are entitled to declaratory  
20 relief.

21 73. Unless enjoined, defendants will continue to engage in the unlawful acts  
22 and the pattern or practice of discrimination described above. The disability class  
23 plaintiffs, FHNV and the individual plaintiffs have no adequate remedy at law. They are  
24 now suffering, and will continue to suffer, irreparable injury from defendants' acts and  
25 their pattern or practice of discrimination based on disability or handicap unless relief is  
26 provided by this Court. Accordingly, the disability class plaintiffs, FHNV and the  
27 individual plaintiffs are entitled to injunctive relief.

28 ///

1 **VI. CLAIMS**

2 **A. FIRST CLAIM**

3 **[Fair Housing Act]**

4 ***Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants***

5 74. Plaintiffs reallege and incorporate by reference each paragraph previously  
6 alleged in this complaint.

7 75. Defendants have injured the disability class plaintiffs, FHNV and the  
8 individual plaintiffs by committing discriminatory housing practices in violation of the  
9 federal Fair Housing Act, 42 U.S.C. section 3601 et seq.

10 **B. SECOND CLAIM**

11 **[California Fair Employment and Housing Act]**

12 ***Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants***

13 76. Plaintiffs reallege and incorporate by reference each paragraph previously  
14 alleged in this complaint.

15 77. Defendants have injured the disability class plaintiffs, FHNV and the  
16 individual plaintiffs by committing discriminatory housing practices in violation of the  
17 California Fair Employment and Housing Act, California Government Code section  
18 12955, et seq.

19 **C. THIRD CLAIM**

20 **[California Unruh Civil Rights Act]**

21 ***Disability Class Plaintiffs and Individual Plaintiffs v. Defendants***

22 78. Plaintiffs reallege and incorporate by reference each paragraph previously  
23 alleged in this complaint.

24 79. Defendants have injured the disability class plaintiffs and individual  
25 plaintiffs by committing unlawful practices in violation of the Unruh Civil Rights Act,  
26 California Civil Code section 51, et seq.

27 80. Pursuant to the Unruh Civil Rights Act the disability class plaintiffs and  
28 individual class plaintiffs are entitled to statutory damages, among other remedies, of

up to three times actual damages as determined by a trier of fact.

**D. FOURTH CLAIM**

**[Disabled Persons Act]**

***Disability Class Plaintiffs only v. Defendants***

81. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in this complaint.

82. Defendants injured the disability class plaintiffs in violation of the Disabled Persons Act by committing the following unlawful housing practices:

a. Denying full and equal access to housing accommodations, in violation of Civil Code § 54.1(b)(1); and,

b. Refusing to make reasonable accommodations in rules, policies, practices, or services when those accommodations may be necessary to afford individuals with disabilities the equal opportunity to use and enjoy housing accommodations, in violation of Civil Code 54.1(b)(3)(B).

83. Pursuant to Civil Code 54.1, the disability class plaintiffs are entitled to statutory damages, among other remedies, of up to three times actual damages as determined by a trier of fact.

**E. FIFTH CLAIM**

**[Unfair Business Practices re Discrimination]**

***Disability Class Plaintiffs, FHNV and Individual Plaintiffs v. Defendants***

84. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in this complaint.

85. In acting as herein alleged, defendants have engaged in a pattern or practice of unlawful discrimination in the operation of the Redwood Retirement Residence, a business establishment, and therefore have engaged in acts of unfair competition as the same is defined in section 17200 of the Business & Professions Code.

86. In bringing this action, plaintiffs and the plaintiff class are acting in the



1 interest of themselves and the general public pursuant to the California Business and  
2 Professions Code § 17204.

3 87. Plaintiffs and the plaintiff class seek injunctive relief ordering defendants  
4 to stop their unlawful practices.

5 **F. SIXTH CLAIM**

6 **[Unfair Business Practices]**

7 ***Security Deposit Class Plaintiffs only v. Defendants***

8 88. Plaintiffs reallege and incorporate by reference each paragraph previously  
9 alleged in this complaint.

10 89. In acting as herein alleged, defendants have engaged in acts of unfair  
11 competition as the same is defined in section 17200 of the Business & Professions  
12 Code. by violating Civil Code § 1950.5 governing the security deposits.

13 90. In bringing this action, plaintiffs and the plaintiff class are acting in the  
14 interest of themselves and the general public pursuant to the California Business and  
15 Professions Code § 17204.

16 91. Plaintiffs and the plaintiff class seek injunctive relief ordering defendants  
17 to stop their unlawful practices and restitution of the security deposits wrongfully  
18 collected and/or withheld.

19 **G. SEVENTH CLAIM**

20 **[Unlawful Security Deposit]**

21 ***Security Deposit Class Plaintiffs only vs. Defendants***

22 92. Plaintiffs reallege and incorporate by reference each paragraph previously  
23 alleged in this complaint.

24 93. Defendants injured the security deposit class plaintiffs by demanding and  
25 collecting a non-refundable security deposit in violation of Civil Code § 1950.5(m).

26 94. Pursuant to Civil Code § 1950.5(l), the security deposit class plaintiffs are  
27 entitled to statutory damages of up to twice the amount of the non-refundable security  
28 deposit, plus actual damages according to proof.

**VII. RELIEF**

WHEREFORE, plaintiffs and all class members pray for the following relief against defendants:

1. That the classes and sub-class described above be certified in this action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

2. That the plaintiffs and all class members be awarded statutory, compensatory, and punitive damages according to proof;

3. That the Court enter a declaratory judgment that defendants have violated the applicable provisions of the federal Fair Housing Act and California Fair Employment and Housing Act;

4. That the Court grant temporary, preliminary and permanent injunctive relief against all practices complained about herein and affirmative injunctive relief requiring defendants, their partners, agents, employees, assignees and all persons acting in concert with or participating with them, to take affirmative action to provide equal housing opportunities to all persons without regard to disability or handicap;

5. That the Court order defendants to make restitution to plaintiffs and the security deposit plaintiff class;

6. For costs of suit, including reasonable attorneys' fees; and,

7. All such other relief as the Court deems just.

Dated: July 16, 2007.

Respectfully submitted,

BRANCART & BRANCART



Liza Cristol-Deman  
Attorneys for Plaintiffs

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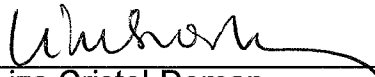
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**VIII. JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby request a trial by jury.

Dated: July 16, 2007.

Respectfully submitted,  
BRANCART & BRANCART

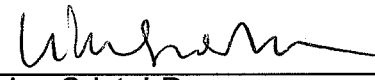
  
\_\_\_\_\_  
Liza Cristol-Deman  
Attorneys for Plaintiffs

**IX. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 16, 2007.

Respectfully submitted,  
BRANCART & BRANCART

  
\_\_\_\_\_  
Liza Cristol-Deman  
Attorneys for Plaintiffs